United States Department of Labor
Employees' Compensation Appeals Board

A.E., Appellant	)	
and	)	**Docket No. 18-1395**
	)	**Issued: January 8, 2019**
DEPARTMENT OF DEFENSE, DEFENSE COMMISSARY AGENCY, Fort Bliss, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 9, 2018 appellant filed a timely appeal from a June 13, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a recurrence of total disability commencing January 31, 2016 due to her accepted December 11, 1991 employment injury.

FACTUAL HISTORY

On December 11, 1991 appellant, then a 30-year-old cashier, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury on December 11, 1991 when she twisted her

[1] 5 U.S.C. § 8101 *et seq.*

right knee while preventing a fall on a wet surface while in the performance of duty. She stopped work on December 11, 1991 and returned to light-duty work at the employing establishment without wage loss on December 17, 1991. OWCP initially accepted appellant's claim for right knee sprain, but later expanded the acceptance of her claim to include bilateral knee sprains of the lateral/medial collateral ligaments, bilateral chondromalacia patellae, and other nonorganic sleep disorder.[2]

On September 20, 1997 appellant returned to part-time work for the El Paso, TX public school system as a case worker assistant. She stopped work on October 1, 1998 and, on the same date, Dr. Andrew J. Palafox, an attending Board-certified orthopedic surgeon, performed OWCP-approved debridement of an osteochondral lesion and partial meniscus tear of the left knee and debridement of a degenerative lateral/medial meniscus lesion of the right knee. Appellant returned to full-time work for the El Paso, TX public school system on June 1, 1999.[3]

By decision dated May 6, 2005, OWCP granted appellant a schedule award for 10 percent permanent impairment of each lower extremity.[4]

Appellant continued to receive periodic treatment from Dr. Palafox who indicated that she complained of bilateral knee pain and swelling. On February 22, 2012 Dr. Palafox reported that, upon physical examination, appellant's knees exhibited crepitus and tenderness upon flexion motion from 0 to 120 degrees. He diagnosed post-traumatic degenerative joint disease of both knees.

On October 4, 2012 Dr. Palafox, assisted by Dr. Luis Urrea, a Board-certified orthopedic surgeon, performed OWCP-approved total knee replacement surgeries (arthroplasties) on both knees.

On December 3, 2012 appellant returned to light-duty work for the employing establishment on a full-time basis.

In a June 12, 2013 work capacity evaluation (Form OWCP-5c), Dr. Palafox advised that appellant was capable of performing her usual job.

In a November 13, 2015 report, Dr. Palafox reported the findings of the physical examination he conducted on that date, noting that both of appellant's knees had well-healed surgical scars. The knees did not exhibit erythema, drainage, or swelling, but there was slight limitation of range of motion given that the left knee had flexion from 0 to 95 degrees and the right knee had flexion from 0 to 100 degrees. Dr. Palafox diagnosed status post bilateral total knee arthroplasties.

[2] Appellant had preexisting genu varum deformity of both knees and collagen disease.

[3] After returning to private employment, appellant worked in several different positions for the El Paso, TX public school system. She received FECA compensation due to loss of wage-earning capacity for periods of her private employment.

[4] On February 4, 2016 OWCP granted appellant a schedule award for an additional 15 percent permanent impairment of each lower extremity.

Appellant stopped work on January 31, 2016 and later filed a recurrence claim (Form CA-2a) alleging a recurrence of disability commencing January 31, 2016 due to her accepted December 11, 1991 employment injury.[5] She asserted that her employment-related lower extremity condition had worsened such that she was no longer capable of working.

In a February 19, 2016 report, Dr. Palafox indicated that appellant presented complaining of knee pain/swelling and difficulties with activities, including walking and standing for prolonged periods. He noted that the physical examination revealed well-healed surgical scars, painful range of motion, and some mild effusion in both knees without erythema, drainage, or major crepitus. Dr. Palafox diagnosed bilateral presence of artificial knee joints.

In a March 23, 2016 report, Dr. Palafox noted that, upon physical examination, appellant had right knee swelling possibly consistent with deep vein thrombosis. There was no effusion in either knee, but that there was limited motion of the right knee secondary to swelling. Dr. Palafox ruled out diagnoses of deep vein thrombosis and presence of functional implants in the knees.[6] On April 21, 2016 appellant presented complaining of moderate right calf pain and difficulties with standing/sitting/walking, including her right leg "giving out." Dr. Palafox advised that her right knee exhibited flexion from 0 to 120 degrees upon range-of-motion testing and that the neurological and vascular examinations showed an intact right lower extremity. He recommended additional diagnostic testing of appellant's right knee.

In a September 27, 2017 report, Dr. Palafox indicated that the examination he conducted on that date showed no major erythema or effusions of appellant's knees. There was slight crepitus and slight pain upon active/passive range of motion of the knees. In a February 22, 2018 work capacity evaluation form, Dr. Palafox listed the date of injury as April 2, 1991 and indicated that appellant was totally disabled from work.

In a March 28, 2018 development letter, OWCP requested that appellant submit additional evidence, including an attending physician's opinion supported by a medical explanation as to how her claimed recurrence of disability was due to her original accepted injury/illness, without intervening cause. It also requested that she complete an attached questionnaire which posed various questions regarding why she believed that she sustained a recurrence of disability due to her December 11, 1991 employment injury.

Appellant submitted her April 28, 2018 answers to the questionnaire, noting that she had continuous lower extremity symptoms since December 11, 1991 which worsened in January 2016 to the point that she could no longer work.

Appellant submitted work capacity evaluation forms dated November 6, 2016 and May 3, and September 27, 2017, in which Dr. Palafox indicated her total disability from work. In the May 3, 2017 form, Dr. Palafox listed the date of injury as April 2, 1991.

[5] Appellant did not file the notice of recurrence until February 28, 2018, a period more than two years after her January 31, 2016 work stoppage.

[6] In an addendum note added later on March 23, 2016, Dr. Palafox advised that a radiologist who obtained a right knee ultrasound at his direction felt that there was no vascular involvement in appellant's right knee. He indicated that she might have a Baker's cyst in the right knee.

In a February 22, 2018 report, Dr. Palafox indicated that his physical examination of appellant showed minimal pain to palpation in both knees without redness, swelling, or ecchymosis. Appellant was neurovascularly intact in her lower extremities. Dr. Palafox recommended that she engage in physical therapy.

In an April 25, 2018 report, Dr. Palafox indicated that appellant had a history of a knee injury on December 11, 1991 and that she later underwent bilateral total knee replacement surgery. He noted that she suffered a "relapse" of her lower extremity symptoms in February 2018 and that she "had stopped working as of [two] years ago because of [appellant's] disabilities." Dr. Palafox indicated that it was "medically probable that [appellant] will have increased weakness to both knees as she gets older, as she has degenerative changes in both knees from the injury suffered in 1991." He indicated that appellant last worked on January 31, 2016 and that, up until February 2018, she was able to manage her pain and symptoms with no significant issues. Dr. Palafox diagnosed bilateral presence of artificial knee joints, bilateral primary knee osteoarthritis, and bilateral internal knee derangement. In an April 25, 2018 work capacity evaluation form, he indicated that appellant was totally disabled from work.

By decision dated June 13, 2018, OWCP denied appellant's recurrence of disability claim, finding that the medical evidence of record was insufficient to establish a recurrence of disability commencing January 31, 2016 due to her accepted December 11, 1991 employment injury. It determined that the reports she submitted in support of her claim did not establish an objective worsening of her December 11, 1991 employment injury causing disability from work on or after January 31, 2016.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[7] Recurrence of disability also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.[8]

Generally, a withdrawal of a light-duty assignment would constitute a recurrence of disability where the evidence established continuing injury-related disability for regular duty.[9] A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, nonperformance of job duties or other downsizing or where a loss of wage-earning capacity determination is in place.[10] Absent a change or withdrawal of a light-duty assignment, a recurrence of disability following a return to light duty may be established by showing a change

[7] 20 C.F.R. § 10.5(x).

[8] *Id.*

[9] *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.6a(4) (June 2013).

[10] 20 C.F.R. §§ 10.5(x), 10.104(c) and 10.509; *see id.*, Chapter 2.1500.2b (June 2013).

in the nature and extent of the injury-related condition such that the employee could no longer perform the light-duty assignment.[11]

Where an employee claims a recurrence of disability due to an accepted employment-related injury, he or she has the burden of proof to establish that the recurrence is causally related to the original injury.[12] This burden includes the necessity of furnishing evidence from a qualified physician who concludes that the condition is causally related to the employment injury.[13] The physician's opinion must be based on a complete and accurate factual and medical history and supported by sound medical reasoning.[14]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability commencing January 31, 2016 due to her accepted December 11, 1991 employment injury.

OWCP accepted appellant's January 31, 2016 traumatic injury claim for right knee sprain, bilateral knee sprains of the lateral/medial collateral ligaments, bilateral chondromalacia patellae, and other nonorganic sleep disorder. On October 1, 1998 appellant underwent OWCP-approved debridement of an osteochondral lesion and partial meniscus tear of the left knee and debridement of a degenerative lateral/medial meniscus lesion of the right knee. On October 4, 2012 she underwent OWCP-approved total knee replacement surgeries (arthroplasties) on both knees. On December 3, 2012 appellant returned to light-duty work for the employing establishment on a full-time basis. She stopped work on January 31, 2016 and later filed a recurrence alleging a recurrence of total disability commencing January 31, 2016 due to her accepted December 11, 1991 employment injury.

Appellant submitted a number of reports dated between 2016 and 2018 from Dr. Palafox, an attending physician, but none of these reports contain an opinion that she sustained a recurrence of total disability commencing January 31, 2016 due to her accepted December 11, 1991 employment injury. In these reports, Dr. Palafox reported physical examination findings for her knees/lower extremities such as pain upon range of bilateral knee motion and mild effusion of both knees. For example, in a February 19, 2016 report, he indicated that appellant presented complaining of knee pain/swelling and difficulties with activities, including walking and standing for prolonged periods. Dr. Palafox noted that the physical examination revealed well-healed surgical scars, painful range of knee motion, and some mild effusion in both knees without erythema, drainage, or major crepitus. He noted similar examination findings in reports dated March 23 and April 21, 2016, although the findings in these reports focused on appellant's right knee. The Board finds that these reports are of no probative value in establishing her claim for a recurrence of total disability commencing January 31, 2016 due to her accepted December 11, 1991 employment injury because these reports do not contain a rationalized medical opinion on

[11] *Theresa L. Andrews*, 55 ECAB 719, 722 (2004).

[12] 20 C.F.R. § 10.104(b); *see supra* note 9 at Chapter 2.1500.5 and 2.1500.6 (June 2013).

[13] *See S.S.*, 59 ECAB 315, 318-19 (2008).

[14] *Id.* at 319.

this matter. The Board has held that medical evidence which does not offer an opinion regarding the cause of a given medical condition/disability is of no probative value on that matter.[15]

Similarly, additional reports of Dr. Palafox from 2017 and 2018 are of no probative value on the relevant issue of this case due to that fact that they do not contain a rationalized medical opinion that appellant sustained an employment-related recurrence of total disability.[16] In reports dated September 27, 2017 and February 22, 2018, he reported examination findings for the lower extremities, but he provided no indication that she had disability due to her December 11, 1991 employment injury on or after January 31, 2016. Appellant also submitted work capacity evaluation forms dated November 6, 2016 and May 3 and September 27, 2017, and February 22, 2018 in which Dr. Palafox indicated total disability from work. However, these forms do not provide a clear indication that the disability was due to the December 11, 1991 employment injury and are of no probative value on this matter due to their lack of a rationalized medical opinion on the cause of the disability.[17]

In an April 25, 2018 report, Dr. Palafox indicated that appellant had a history of a knee injury on December 11, 1991 and that she later underwent bilateral total knee replacement surgery. He noted that she suffered a "relapse" of her lower extremity symptoms in February 2018 and that she "had stopped working as of [two] years ago because of [appellant's] disabilities." Although Dr. Palafox mentioned appellant's work stoppage in early-2016, he only generally related the stoppage to "[appellant's] disabilities" and he did not provide a clear opinion that it was related to her December 11, 1991 employment injury. This report also is of no probative value regarding appellant's disability claim due to its lack of a rationalized medical opinion on this matter.[18] Dr. Palafox indicated that it was "medically probable that [appellant] will have increased weakness to both knees as she gets older, as she has degenerative changes in both knees from the injury suffered in 1991." However, it is well established that the possibility of future injury constitutes no basis for the payment of compensation.[19]

Appellant has not submitted medical evidence showing a change in the nature and extent of her injury-related condition such that she could no longer perform the light-duty assignment to which she returned prior to her January 2016 work stoppage.[20] For the reasons explained above, she has not provided medical evidence sufficient to establish an employment-related recurrence of total disability on or after January 31, 2016.

[15] *T.H.*, Docket No. 18-0704 (issued September 6, 2018).

[16] *See D.R.*, Docket No. 16-0528 (issued August 24, 2016).

[17] *See supra* notes 15 and 16.

[18] *See id.*

[19] *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988). In an April 25, 2018 work capacity evaluation form, Dr. Palafox indicated that appellant was totally disabled from work. However, he did not provide any opinion on the cause of the disability and therefore this form is of no probative value on the relevant issue of this case. *See supra* notes 15 and 16.

[20] In addition, there is no indication that appellant's light-duty assignment was withdrawn by the employing establishment. *See supra* notes 9 through 11.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a recurrence of total disability commencing January 31, 2016 due to her accepted December 11, 1991 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 13, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board